

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

60801

FILE: B-186082

DATE: April 26, 1976 99021

MATTER OF: Trace Engineered Products

DIGEST:

Protest involving an affirmative determination of responsibility by contracting agency is not for consideration on merits.

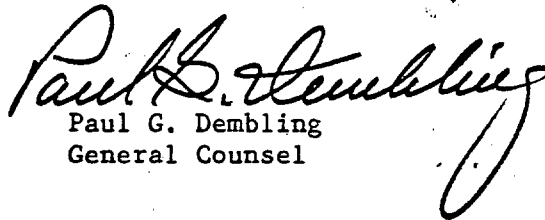
By mailgram of February 25, 1976, Trace Engineered Products (Trace) protested to the Department of the Navy the award of contract N00104-76-C-6313 to the low bidder, Fitchburg Division of Litton Industries, on the ground that Fitchburg is not an acceptable contractor. The contract for 1,100 rolls of bearing time recorder paper was solicited competitively on an oral basis pursuant to Armed Services Procurement Regulation (ASPR) § 3-501(d) (1975). Fitchburg's bid of \$16.50 per roll was substantially less than Trace's bid of \$34.50 per roll, and award was made to Fitchburg on January 28, 1976.

The record indicates that on February 9, 1976, the president of Trace, James Ford, was informed that award had been made to Fitchburg. Mr. Ford states that he immediately telephoned the Navy Underwater Systems Center (NUSC) and was informed that the awardee had not passed qualification testing at that time. By mailgram dated February 25, 1976, Trace protested to the Navy and, thereafter, it protested to this Office.

We are advised that Fitchburg's first article was approved on February 19, 1976, by NUSC. This protest appears to question an affirmative determination of responsibility which has been made by the Navy. Generally, we do not review such determinations since they are based in large measure on subjective judgments which are largely within the discretion of procuring officials who must suffer any difficulties experienced by reason of a contractor's inability to perform. While we will continue to consider protests against determinations of non-responsibility to provide assurance against the arbitrary rejection of bids, the issue raised by the protester in the instant case is not for consideration by our Office. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64.

B-186082

Moreover, we note that the protester knew the basis of its protest on February 9, but did not file a protest with the Navy until more than 10 working days later, when the mailgram dated February 25 was received. Section 20.2(b)(2) of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), requires that a protest "shall be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier." We point this out as a matter of information so that the protester may be made aware of this requirement.


Paul G. Dembling
General Counsel